

APPEAL NO. 031820
FILED AUGUST 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 20, 2003, with the record closing on June 3, 2003. With regard to the issues before him the hearing officer determined: (1) that the respondent/cross-appellant (claimant) suffered a compensable injury on _____; (2) that the appellant/cross-respondent (carrier) is not relieved of liability because the claimant timely notified the employer of her injury pursuant to Section 409.001; (3) that the carrier has not waived the right to contest compensability; (4) that the claimant suffered a cervical and right elbow strain; and (5) that the claimant had disability from November 1, 2002, through the date of the CCH. The hearing officer's determination on the carrier waiver issue has not been appealed and has become final. Section 410.169.

The carrier's principal point on appeal is the lack of timely notice to the employer of a work-related injury. The carrier also appeals the injury and disability issues generally. The claimant appeals the hearing officer's determination that the compensable injury is a cervical and right elbow strain as being an extent-of-injury matter and was not an issue before the hearing officer. Both parties respond to the other party's appeal.

DECISION

Affirmed.

The claimant apparently worked in an industrial laundry. It is fairly undisputed that on _____, a string or cord on a bag of clothes on an overhead track system caught the claimant's gold chain necklace jerking the claimant's neck and breaking the gold chain. It is undisputed that the incident was either reported or the employer was aware of the incident (and helped the claimant look for the gold chain). Whether, when, and to whom the claimant reported an injury is the key to the carrier's appeal. The claimant's testimony is totally vague and ambiguous. The claimant and the hearing officer base the finding of a timely report of an injury (see Section 409.001 for the reporting requirements) on a transcribed statement of a coworker. The transcribed statement states:

Q: Okay um..did she [the claimant] continue to tell you anything about it after the uh..incident occurred like several days or weeks afterwards?

A: Uh..well, some days went by and she said to the supervisor that her face and her ear hurt on the side where the bag had hit her.

The hearing officer may believe any part, all, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947,

no writ). We hold this to be minimally sufficient to support the hearing officer's determination on the timely notice issue, the carrier's brief notwithstanding. On the issues of injury and disability the hearing officer's determinations are supported by medical evidence in reports of the treating chiropractor and the carrier's required medical examination doctor.

The claimant's appeal asserts that the hearing officer's determination of "strains of the cervical spine and right elbow" limit the extent of the injury and that extent of injury was not an issue before the hearing officer. One of the issues that was before the hearing officer was "What are the body parts injured on _____?" The hearing officer answered that issue and we perceive no error that the hearing officer described or identified the injury as a strain. We are cognizant that the claimant is alleging injury to her left thumb, both arms, shoulders, back, legs, and jaw; however, we do not read the hearing officer's decision as excluding other parts of the body.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge